

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NANCY KAY EVILSIZOR,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 235242

St. Joseph Circuit Court

LC No. 00-010362-FH

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of felonious assault, MCL 750.82, for which she was sentenced to two years' probation with the first two months in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Barbara McCoy and her boyfriend David Delisle were shopping at a Wal-Mart store. Defendant and her three children were also shopping there. The adults argued in the store and the argument continued in the parking lot. It culminated with defendant striking McCoy in the face with a metal sign. Defendant contends that the prosecutor failed to present sufficient evidence to negate her claim that she was acting in defense of her children.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

"A claim of self-defense or defense of others first requires that a defendant has acted in response to an assault." *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). "A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). "A battery is the wilful and harmful or offensive touching of another person which results from an act intended to cause such a contact." *Espinoza v Thomas*,

189 Mich App 110, 119; 472 NW2d 16 (1991). A defendant may use force to defend others under the following circumstances: (1) when she acted, the defendant honestly and reasonably believed that she had to use force to protect her children, (2) the defendant must have used the kind of force that was appropriate to the attack, i.e., the degree of force that seemed necessary at the time to protect her children from danger, (3) the defendant only used force during the time that it seemed necessary for the purpose of protection, and (4) the defendant did not act wrongfully and bring on the assault. CJI2d 7.22. If the defendant is attacked by more than one person or by one person who is helped and encouraged by others, she has the right to act in self-defense against all of them. CJI2d 7.24. "Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Elkhoja*, 251 Mich App 417, 443; 651 NW2d 408 (2002).

Viewed in a light most favorable to the prosecution, the evidence was sufficient to negate defendant's claim that she acted in defense of her children. By all accounts, the parties got into an argument involving swearing and threats of harm. When the parties left the store, defendant deliberately picked up the sign and followed McCoy and Delisle. They made disparaging remarks and/or verbal threats toward defendant. According to a deputy sheriff, defendant admitted striking McCoy simply because she did not like McCoy's remarks. According to defendant and her daughter, Delisle stuck his fist in the child's face and may have said something threatening, but defendant testified that this occurred well before she struck McCoy. In fact, although the child testified that the alleged assault occurred by Delisle's car, defendant testified that it occurred some distance from the car and after making the threat, Delisle and McCoy turned and walked away. At that point, neither defendant nor her children were in danger of any harm, yet defendant followed them to their car.

According to a witness, McCoy pushed defendant's cart away from the car but made no move to actually harm the children. The cart was brought safely to a halt before defendant hit McCoy with the sign. According to defendant, she hit McCoy because Delisle shook the cart and McCoy tried without success to push it away. Either way, at the time defendant struck McCoy, the children were not in immediate danger of physical harm. Therefore, the evidence was sufficient to permit a rational juror to conclude beyond a reasonable doubt that defendant was not acting in response to a reasonable and honest perception of danger to her children at the time she struck McCoy.

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot